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For your comments.

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A COMPARISON OF 40 CFR 112 TO THE SPCC TASK FORCE RECOMMENDATIONS, MAY 1980
PROPOSED REGULATION, AND COMMENTS RECEIVED ON THE PROPOSED CHANGES

This document compares the existing regulatory language of 40 CFR Part 112 to the proposed changes to that language (45 FR 33814, May 20, 1980), comments received on those proposed changes, and the recommendations published by the SPCC Task Force in the Interim Final Report of May 13, 1988. For each of eight issue areas, pertinent provisions from the existing regulation are briefly summarized, with an emphasis on those provisions proposed to be changed in May 1980 or recommended for modification by the Task Force. Relevant public comments on the proposed changes provide an indication of reactions that may be expected from the regulated community when the SPCC regulatory changes are repropoed. The eight issue areas are:

- Technical Specifications;
- Plan Preparation Requirements;
- Plan Implementation;
- Definitions;
- Applicability of SPCC Requirements;
- Outer Continental Shelf;
- Contingency Planning; and
- Memorandum of Understanding.

TECHNICAL SPECIFICATIONS

Existing Regulation

- Language: technical specifications in the rule are in terms of "guidelines" and "should"s.
- Tank testing frequencies: regular tests, no specified interval.

Task Force Recommendations

- Language: use "shall" instead of "should," as appropriate.
- New tanks must comply with industry standards and codes.
- Plan must contain a schedule for internal inspections, including minimum frequencies for inspections of tanks and secondary containment systems.
- Integrity testing should be required for new tanks or for old tanks with no secondary containment.

May 1980 Proposed Regulation

- Language: the words "requirements" and "shall" are substituted for the words "guidelines" and "should."
- Tank testing frequency: at specified intervals.
- Secondary containment areas:
 - describe in SPCC Plans the structural specifications and capacity;
 - maintain a record of inspections performed prior to the release of accumulated runoff or rainfall from secondary containment areas.

Comments on the Proposed Regulation

- Opposition to the elevation of "guidelines" to "requirements".
- Opposition to the specified intervals for tank testing, and monitoring and recordkeeping requirements for secondary containment areas.
- Acceptable alternatives to leak testing should be listed explicitly in the rule.

PLAN PREPARATION REQUIREMENTS

Existing Regulation

- Plan format: form not specified.
- Certification of Plan: the professional engineer (PE) certifies that the Plan demonstrates good engineering judgment.

Task Force Recommendations

- Plan format: no comment.
- Certification of Plan:
 - PE must visit and examine the site;
 - PE must certify that testing results are correct and that contingency plan is reasonable.

May 1980 Proposed Regulation

- SPCC Plan required to be in narrative form to provide substantive information about the facility's spill prevention features.
- Require the certifying PE to verify that he had examined the facility, was familiar with Part 112, and had found that the Plan complied with Part 112.

Comments on the Proposed Regulation

- Opposed to narrative form; suggested a combination of checklist and narrative.
- Objected to the PE certification; suggested that EPA allow Registered Petroleum Operations Engineers or other experienced, qualified oilfield personnel to certify the Plans; and stated that site visits could be prohibitively expensive.

PLAN IMPLEMENTATION

Existing Regulation

- Time for implementation of Plan for new facilities:
 - 6 months for preparation;
 - 12 months for implementation.
- Copy of Plan on site: Part 112 does not require that a copy of the Plan be available for inspection at facilities operated less than 8 hours per day.

Task Force Recommendations

- A new facility should be in full compliance prior to operating.

May 1980 Proposed Regulation

- Time for implementation of Plan for new facilities: prepare and implement SPCC Plans before beginning operations.
- Copy of Plan on site: all facilities subject to Part 112 must maintain a copy of the SPCC Plan on site that is available for review by EPA during normal working hours.
- Facility required, within 5 days of receiving a request, to mail a copy of its SPCC Plan to the EPA Regional Administrator.

Comments on the Proposed Regulation

- Time for implementation: retain present timing.
- Copy of Plan on site: almost unanimous negative response; suggested that Plan be kept at the owner or operator's nearest field or production office, a responsible person's vehicle, or at some other location where it would be available to persons who would respond to a spill.
- Mail a copy of Plan: suggested that Plans be reviewed on site as technical questions can be more readily reviewed and trade secrets more adequately protected.

DEFINITIONS

Existing Regulation

- Includes definitions such as:
 - Oil;
 - Navigable waters;
 - Discharge;
 - Spill event;
 - Onshore facility;
 - Offshore facility; and
 - Owner or operator.

Task Force Recommendations

- Revise existing definition of "navigable waters."
- Add new definitions, including:
 - Breakout tank;
 - Bulk storage tank;
 - SPCC Plan; and
 - Contingency Plan.

May 1980 Proposed Regulation

- Revise existing definition of "navigable waters."
- Replace "discharge" with "spill," "spill event," and "spillage."
- Add new definitions for:
 - Underground buried storage;
 - Oil production facility (onshore); and
 - Oil drilling, production, or workover facilities (offshore).

Comments on the Proposed Regulation

- Some commenters suggested that the term "navigable waters" be eliminated, while others supported a narrower definition.
- Many requested a clearer or more restrictive definition of "spill," "spill event," and "spillage."
- Several objected to the proposed addition of definitions for "oil production facility (onshore)" and "oil drilling, production, or workover facilities (offshore)."
- Commenters suggested that new definitions be provided for:
 - Unburied storage;
 - Maximum permissible leakage;
 - Registered agent; and
 - Good engineering practice.

APPLICABILITY OF SPCC REQUIREMENTS

Existing Regulation

Two exemption criteria:

- Facility located so that there is no reasonable expectation of a spill into navigable waters; or
- Capacity below 42,000 gallons underground and below 1320 gallons above ground.

Task Force Recommendations

- Provide different requirements based on facility size.
- Subject larger capacity facilities to more stringent requirements.

May 1980 Proposed Regulation

- SPCC plan would be required from any facility that has a 1000 gallon spill or more than two reportable spills in a year.

Comments on the Proposed Regulation

- Commenters recommended that some minimum storage capacity exemption should be retained.
- Some commenters suggested that two small spills do not constitute a sufficient basis for invoking SPCC requirements.
- Some commenters requested that service stations be exempted; however, one commenter suggested that small tanks, badly installed, are more of a problem at service stations than at bulk plants and terminals.

OUTER CONTINENTAL SHELF (OCS)

Existing Regulation

- Authority extends only to the contiguous zone.

Task Force Recommendations

- None.

May 1980 Proposed Regulation

- Extend authority beyond the contiguous zone to the OCS, pursuant to amendments to section 311 of the Clean Water Act (CWA).
- Add requirements for OCS oil or gas drilling, production, or workover facilities:
 - Tank owners must prepare SPCC Plans if either of the following occurs:
 - failure to comply with USGS or Coast Guard regulations; or
 - an oil spill in excess of 8,400 gallons within a 30-day period.
 - Once an SPCC Plan is prepared, compliance with Part 112 must be continued.

Comments on the Proposed Regulation

- Most argued that the extension of authority to the OCS would duplicate the regulatory efforts of the DOI and DOT.
- A few major oil companies supported extending coverage to the OCS.
- Many claimed that OCS oil or gas drilling, production, or workover facilities would be unnecessarily penalized by the added requirements.
- Several felt that the 8,400 gallon limit for spills is an arbitrary and unjustified threshold.
- Oil company spokesmen and commenters from the DOI contended that the added requirements would impose significant additional paperwork without contributing appreciably to the prevention of spills.

CONTINGENCY PLANNING

Existing Regulations

- When installation of structures and equipment is not practicable, the owner or operator should clearly demonstrate such impracticability and provide:
 - A contingency plan following 40 CFR Part 109; and
 - A written commitment of manpower, equipment, and materials.

Task Force Recommendations

- Require every SPCC facility to have an oil spill contingency plan included in its SPCC plan.
- Require detailed contingency plan provisions incorporated into 40 CFR Part 112.
- Consider RCRA and SARA section 303 provisions in developing required contingency plan provisions.
- Revise 40 CFR Part 109 and incorporate into the NCP.

May 1980 Proposed Regulation

- Regulated facilities are required to have structures and equipment or, for those parts of the facility where such a prevention system is impracticable, a contingency plan.
- Facility owner or operator "shall demonstrate ... impracticability in the SPCC plan."

Comments on the Proposed Regulation

- Commenters favored the substitution of contingency plans for SPCC systems at facilities where SPCC systems are impracticable.
- Commenters stated that "impracticability" should be defined, as should the evidence defining economic impracticability.
- Oil industry and trade associations favored guidelines, citing the cost-effective solutions that are promoted.
- Environmentalists and a municipal water authority favored requirements over guidelines.

MEMORANDA OF UNDERSTANDING

Existing Regulation

- The only MOU included in the current regulations is with DOT. The MOU defines non-transportation-related facilities and transportation-related facilities.

Task Force Recommendations

- Amendments to SPCC regulation may require further coordination with other Federal agencies.
- An MOU with DOT should define the difference between bulk storage tanks and pipeline surge and makeup tanks.
- MOUs should be developed to share inspection and enforcement personnel with agencies of the Interior Department (MMS and BLM) and the Labor Department (OSHA.)

May 1980 Proposed Regulation

- The MOU with DOT stands unchanged.

Comments on the Proposed Regulation

- Commenters suggested that the natural gas industry should be subject to DOT authority (not EPA's) under the current MOU because the natural gas industry and storage tanks are inherently transportation-related.
- Commenters suggested that since facilities on the outer continental shelf were adequately regulated by DOI (USGS) and DOT (USCG), EPA should turn over regulatory authority by an MOU.